

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

TANIA HENDERSON,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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No. 4:16-CV-1871 CEJ

MEMORANDUM

This matter comes before the Court on movant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The motion is successive and will be summarily dismissed.

On April 29, 2013, movant pled guilty to theft of government funds, in violation of 18 U.S.C. § 641, and aggravated identify theft, in violation of 18 U.S.C. § 1028A(a)(1). Movant was sentenced on July 30, 2013 to 144 months' imprisonment and three years of supervised release. *United States v. Henderson*, No. 4:12CR452 CEJ (E.D. Mo.). The United States Court of Appeals for the Eighth Circuit affirmed the judgment on April 4, 2014. *United States v. Henderson*, No. 13-2755 (8th Cir. 2014).

Movant filed her first motion to vacate her sentence, brought pursuant to 28 U.S.C. § 2255 on October 9, 2015. The Court dismissed movant's motion to vacate as untimely filed on November 9, 2015. *See Henderson v. United States*, No. 4:15CV1556 CEJ (E.D.Mo.). Movant appealed the dismissal of her action to the United States Court of Appeal for the Eighth Circuit. *See Henderson v. United States*, No. 15-3827 (8th Cir.2016). The Court of Appeals denied

movant's request for certificate of appealability on April 28, 2016. *Id.* Movant filed the instant motion on November 28, 2016

The dismissal of a federal habeas petition on the ground of untimeliness is a determination “on the merits” for purposes of the successive petition rule. *See In re Rains*, 659 F.3d 1274, 1275 (10th Cir. 2011) (per curiam); *Quezada v. Smith*, 624 F.3d 514, 519–20 (2d Cir. 2010) (“We hold that dismissal of a § 2254 petition for failure to comply with the one-year statute of limitations constitutes an adjudication on the merits that renders future petitions under § 2254 challenging the same conviction ‘second or successive’ petitions under § 2244(b).” (additional internal quotation marks omitted)). As a result, the instant motion is successive and subject to dismissal.

Under 28 U.S.C. § 2244(a) and § 2255(h) district courts may not entertain a second or successive motion to vacate unless it has first been certified by the Court of Appeals. The instant petition has not been certified by the Court of Appeals for the Eighth Circuit. As a result the Court may not grant the requested relief, and this instant motion must be dismissed.

A separate order of dismissal will be filed with this Memorandum.

Dated this 9th day of December, 2016.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE